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August 25, 2008

DEPARTMENT OF ENERGY
OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Name of Case: Personnel Security Hearing
Date of Filing: March 17, 2008
Case Number: TSO-0609

This decision concerns the eligibility of XXXXX XXX XXXXX, (hereinafter referred to as "the Individual") to maintain an access authorization under the regulations set forth at 10 C.F.R. Part 710, entitled "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material."¹ This decision considers whether, on the basis of the evidence in this proceeding, the Individual's access authorization should be granted. For the reasons stated below, I find that the Individual's access authorization should be granted.

I. BACKGROUND

The present proceeding began when a security clearance was requested on behalf of the Individual. A background investigation of the Individual revealed derogatory information concerning the Individual, including: three arrests (two of which were alcohol-related), two incidents in which persons had contacted local law enforcement because of concerns that the Individual might harm his family members, and an assessment by a court appointed DUI evaluator indicating that the Individual "displays a propensity to alcoholism/chemical dependency." Exhibit 4 at 3. The LSO conducted a personnel security interview (PSI) of the Individual on August 2, 2007, to address the derogatory information.² This PSI failed to resolve the security concerns raised by the above-mentioned derogatory information.

Soon thereafter, the LSO initiated an administrative review proceeding. *See* 10 C.F.R. § 710.9. The LSO issued a letter notifying the Individual that it possessed information that raised a

¹ An access authorization is an administrative determination that an individual is eligible for access to classified matter or special nuclear material. 10 C.F.R. § 710.5. Such authorization will be referred to in this Decision as an access authorization or a security clearance.

² The transcript of this PSI appears in the Record as Exhibit 2.

substantial doubt concerning his eligibility for access authorization (the Notification Letter) under two potentially disqualifying criteria set forth at 10 C.F.R. § 710.8(j) and (l).³

Specifically, the Notification Letter alleges that the Individual:

1. Uses alcohol habitually to excess, and may suffer from an alcohol-related disorder;
2. Continues to use alcohol;
3. Has been arrested on three occasions, and therefore has established a pattern of inability or unwillingness to adhere to rules and regulations; and
4. Has been involved in two incidents involving domestic violence.

Statement of Charges at 1-2.

The Individual filed a request for a hearing in which he made a general denial of the allegations contained in the Notification Letter. This request was forwarded to the Director of the Office of Hearings and Appeals (OHA), who appointed me as Hearing Officer.

At the hearing, the LSO presented one witness: the DOE Personnel Security Specialist. The Individual presented five witnesses: his spouse, his Employee Assistance Program (EAP) Counselor (the EAP Counselor), his Alcoholic's Anonymous (AA) sponsor (the Sponsor), and two of his children. The Individual also testified on his own behalf. *See* Transcript of Hearing, Case No. TSO-0609 (hereinafter cited as "Tr.").

II. STANDARD OF REVIEW

The Hearing Officer's role in this proceeding is to evaluate the evidence presented by the agency and the Individual, and to render a decision based on that evidence. *See* 10 C.F.R. § 710.27(a). The regulations state that "[t]he decision as to access authorization is a comprehensive, common-sense judgment, made after consideration of all the relevant information, favorable or unfavorable, as to whether the granting of access authorization would not endanger the common defense and security and would be clearly consistent with the national interest." 10 C.F.R. § 710.7(a). I have considered the following factors in rendering this opinion: the nature, extent, and seriousness of the conduct; the circumstances surrounding the conduct, including knowledgeable participation; the frequency and recency of the conduct; the Individual's age and maturity at the time of the conduct; the voluntariness of the Individual's participation; the absence or presence of rehabilitation or reformation and other pertinent behavioral changes; the motivation for the conduct, the potential for pressure, coercion, exploitation, or duress; the

³ The Notification letter alleges, in relevant part, that the Individual has

(1) Been, or is, a user of alcohol habitually to excess . . . 10 C.F.R. § 710.8(j) (Criterion J), and,

(2) Engaged in any unusual conduct or is subject to any circumstances which tend to show that the individual is not honest, reliable, or trustworthy; or which furnishes reason to believe that the individual may be subject to pressure, coercion, exploitation, or duress which may cause the individual to act contrary to the best interests of the national security . . . 10 C.F.R. § 710.8(l) (Criterion L).

likelihood of continuation or recurrence; and other relevant and material factors. *See* 10 C.F.R. §§ 710.7(c), 710.27(a). The discussion below reflects my application of these factors to the testimony and exhibits presented by both sides in this case.

III. FINDINGS OF LAW AND FACT

Background

On October 22, 1994, the Individual received a citation for poaching a deer and obstructing the fish and game officer's investigation of the deer poaching incident. Exhibit 3 at 18. On February 2, 1996, the police responded to a report that the Individual had dragged his daughter out of a residence and had thrown her against a wall. That report also alleged that the Individual's daughter was screaming for the Individual "not to hit her." *Id.* at 25.

On March 16, 2003, the Individual was arrested for domestic battery after police were called to the Individual's home. The Individual, who had been drinking at the time, had engaged in a fistfight with his adult son. As a result of this incident, the Individual was required to avoid contact with his family and his residence for a cooling off period. During this cooling off period, on March 22, 2003, the Individual's spouse contacted local law enforcement authorities to express her concern that the Individual might return to their residence in violation of the court's orders.

On April 1, 2003, the Individual was arrested for Driving Under the Influence of Alcohol (DUI). The Individual was also charged with Resisting or Obstructing Officers after attempting to flee the arresting officers on foot. The Individual admitted that he had consumed about ten beers prior to this incident. As a result of this arrest, the Individual underwent a court-ordered alcohol evaluation. That evaluation was conducted on May 8, 2003, by a DUI Evaluator. The DUI evaluator issued a report, which appears in the record as Exhibit 4, in which she states:

The [Individual] displays a propensity to alcoholism/chemical dependency as evidenced by a high MAST score and the DSM-IV Criteria; including several attempts to quit/cut down on alcohol use. He has limited exposure to education, awareness of emergent problems related to continued use of alcohol. I would recommend he abstain from consuming alcohol, refrain from visiting places where alcohol is consumed/sold. If he is unable to abstain I would recommend a detoxification program; also recommend a Level II education class and attendance at Alcoholic Anonymous meetings for a minimum of a year.

Exhibit 4 at 1. The Court subsequently required the Individual to attend AA for three months.

Criterion J.

The record supports the LSO's conclusion that the Individual habitually used alcohol to excess. The Individual does not contest this conclusion. Excessive alcohol consumption often leads to the exercise of questionable judgment or the failure to control impulses, and can raise questions about an individual's reliability and trustworthiness. *Revised Adjudicative Guidelines for*

Determining Eligibility for Access to Classified Information issued by the Assistant to the President for National Security Affairs, The White House (December 29, 2005) (Revised Guidelines) Guideline G at 10. Accordingly, DOE Hearing Officers have consistently found that excessive use of alcohol raises important security concerns. *See, e.g., Personnel Security Hearing*, Case No. VSO-0079, 25 DOE ¶ 82, 803 (affirmed by OSA, 1996); *Personnel Security Hearing*, Case No. VSO-0042, 25 DOE ¶ 82,771 (1995) (affirmed by OSA, 1996); *Personnel Security Hearing*, Case No. VSO-0014, 25 DOE ¶ 82,755; *aff'd, Personnel Security Review*, 25 DOE ¶ 83,002 (affirmed by OSA, 1995). In these proceedings, it has been recognized that an individual's excessive use of alcohol might impair his judgment and reliability, and his ability to control impulses. These factors amplify the risk that an individual will fail to safeguard classified matter or special nuclear material.

Since the Individual agrees with the LSO's assertion that his consumption of alcohol is problematic, the only issue before me under Criterion J, is whether the Individual has submitted sufficient evidence of rehabilitation and reformation to resolve the security concerns raised by his habitual use of alcohol to excess. After considering all of the evidence in the record, I find that he has done so.

The *Revised Guidelines* set forth four conditions that could mitigate security concerns arising from alcohol. Among those conditions are the following:

- (b) the individual acknowledges his or her alcoholism or issues of . . . alcohol abuse, provides evidence of actions taken to overcome this problem, and has established a pattern of . . . responsible use (if an alcohol abuser);
- (d) the individual has successfully completed . . . counseling or rehabilitation along with any required aftercare, has demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations, such as participation in meetings of Alcoholics Anonymous [(AA)] or a similar organization and has received a favorable prognosis by a duly qualified medical professional or a licensed clinical social worker who is a staff member of a recognized alcohol treatment program.

Revised Guidelines at 11. In this case, the Individual has acknowledged his problems with alcohol. In fact, the Individual has submitted the testimony of an expert witness, the EAP Counselor, who has attributed the Individual's excessive alcohol use to a medical disorder: alcohol abuse. In addition, by the time of the hearing, the Individual had taken a number of important steps in order to address his alcohol abuse. Specifically, the Individual has abstained from the use of alcohol for a period of 10 months, has been meeting regularly with his EAP Counselor, and has actively participated in AA. Tr. at 37, 57-62.

At the hearing, the EAP Counselor testified that he has masters degrees in Clinical Social Work and Marriage and Family Therapy. Tr. at 89. The EAP Counselor further testified that he is a licensed Clinical Social Worker and qualifies as a substance abuse professional under the Department of Transportation's regulations. *Id.* at 89-90. The EAP Counselor has over 22 years experience as an EAP Counselor. *Id.* at 90. The EAP Counselor testified that he has been

providing counseling services to the Individual for a year. *Id.* at 91-92. The EAP Counselor testified that the Individual meets “the DSM criteria for alcohol abuse.” *Id.* at 93. The EAP Counselor reached this conclusion after administering a series of standardized tests and conducting a personal assessment of the Individual. *Id.* The EAP Counselor testified that he recommended that the Individual undergo counseling, obtain education about his disorder and participate in AA. *Id.* at 94. The EAP Counselor testified that he had provided the Individual with counseling and education. *Id.* The EAP Counselor testified that the Individual is actively engaged in his treatment program and is clearly not just going through the motions. *Id.* The EAP Counselor testified that the Individual understands his disorder and what he needs to do in order to address it. *Id.* at 96. The EAP Counselor testified the Individual has a good support system. *Id.* at 101-02. The EAP Counselor testified that the Individual had undergone a major life event (the life threatening and chronically debilitating illness of his spouse) at the same time he was working on achieving his sobriety. *Id.* at 102. The EAP Counselor testified that the Individual had handled that “excruciating” situation very well, without resorting to alcohol use. *Id.* at 104. The EAP counselor testified that the Individual’s prognosis is “Very good to excellent.” *Id.* at 96. The EAP Counselor further opined that he doesn’t “have any concern at this point that [the Individual] was going to abuse alcohol at this point.” *Id.* at 105. I found the EAP Counselor’s testimony to be credible and entitled to great weight.⁴

The Individual’s AA Sponsor testified that that he has known the Individual for approximately one year. Tr. at 56. The Sponsor testified that he has been the Individual’s sponsor for four or five months. *Id.* at 57. The Sponsor testified that he sees the Individual at AA meetings three or four times a week. *Id.* The Sponsor also indicated that the Individual attends other AA meetings as well. *Id.* The Sponsor testified that the Individual is “doing good.” *Id.* at 58. The Sponsor also opined that the Individual is “on his way to a good recovery.” *Id.* at 60. The Sponsor testified that the Individual is serious about his AA program and is really working at it. *Id.* at 61-62. I found the Sponsor’s testimony to be credible and entitled to great weight.

The Individual convincingly testified at the hearing, that he had not consumed alcohol since July 2007, 10 months prior to the hearing. Tr. at 37, 43. This testimony was supported by the testimony of his spouse. *Id.* at 80, 82. The Individual testified that he had originally begun attending AA in 2003, because of a court order resulting from his DUI arrest. *Id.* at 29. He attended AA for as long as he was required to, from three to six months, and stopped attending when it was no longer required by the court. *Id.* at 29-30. He had quit attending AA because he did not “notice the real benefit from AA” at that time. *Id.* at 30. The Individual testified that he began to attend AA meetings again in January 2008. *Id.* at 37. The Individual testified that he began attending AA meetings because he thought it would help him obtain a security clearance. *Id.* at 37, 41-42. The Individual testified that he attends AA meetings three times a week. *Id.*

⁴ The DUI Evaluator, who examined the Individual in 2003, opined that the Individual needed to have one year of abstinence and AA attendance. The DUI Evaluator was not available for examination at the Hearing and therefore was unable to explain the reasoning behind this opinion. The Personnel Security Specialist, who has no formal training in the area of substance abuse, testified that she would like the Individual to have at least two years of abstinence in order to establish that he had been reformed or rehabilitated. Tr. at 126-127. The EAP Counselor testified that when an individual is diagnosed with alcohol abuse “we need at least three months of changed behavior, . . . that’s a minimum . . . that’s after they have seen the light . . . after he got the vision and then made changes, and so I would say a minimum of six months.” Tr. at 95-96.

The Individual testified that he had become committed to his sobriety in 2007, as a result of going through his PSI and going through the process of obtaining a new liver for his spouse. The liver transplant officials made it clear that they would not provide his spouse with a donor liver if she continued drinking. *Id.* at 31-32. The Individual realized that alcohol was interfering with his ability to care for his wife and with his employment. *Id.* at 33-34. The Individual testified that quitting drinking had allowed him to get his life in order and to attend to the demands of caring for his wife and the insurance issues that resulted from his spouse's liver transplant. *Id.* at 35-36. The Individual testified that he used to rely upon alcohol to cope with stress, but now uses more appropriate and effective coping strategies. *Id.* at 40. The Individual testified that he plans to permanently abstain from using alcohol. *Id.* at 46.

After carefully weighing all of the evidence in the record, I am convinced that the Individual recognizes that he suffers from alcohol abuse, is fully committed to his recovery and has provided sufficient evidence of reformation and rehabilitation. Accordingly, I am convinced that the risk that the Individual will return to alcohol use is acceptably low. The Individual has shown that he has been alcohol-free for more than 10 months. He has obtained counseling for his alcohol abuse and has joined and is actively participating in AA. He is committed to sobriety in order to care for his wife, who has recently received a liver transplant and who is recovering from complications arising from that transplant. I therefore conclude that the Individual has resolved the security concerns regarding his excessive use of alcohol.

Criterion L

The Statement of Charges notes that the Individual has been arrested on at least three occasions. On at least two of these occasions, the Individual had failed to cooperate with the arresting officers. This pattern of three arrests dating from October 22, 1994, through April 1, 2003, raises significant security concerns under Criterion L.⁵ "Criminal activity creates doubt about a person's judgment, reliability and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules and regulations." *Revised Guidelines* at 14.

Two of these arrests, the March 16, 2003, arrest for domestic battery and the April 1, 2003, arrest for DUI, occurred within weeks of each other and involved alcohol. It is clear from the record, that the Individual's alcohol abuse was an important causal factor in the circumstances which lead to those arrests. Since I have concluded above that the Individual no longer uses alcohol and is reformed and rehabilitated from his excessive alcohol use, I am of the opinion that the Individual has mitigated the security concerns raised by these arrests.

⁵ The Statement of Charges also cites two other incidents which it claims compound the security concerns about the Individual. Specifically, the Individual's spouse's contacting police with her concerns that the Individual might return to their home against court orders and the incident in which an informant told police that the Individual had thrown his daughter against a wall. However, there is no evidence in the record suggesting that the Individual ever actually returned, or intended to return to his residence as feared by his spouse. The Individual's daughter testified that the informant's allegations that the Individual had thrown her into a wall were inaccurate. Tr. at 67, 75-77. For these reasons, I conclude that the Individual has mitigated the concerns associated with these two incidents.

The third arrest, for deer poaching on October 22, 1994, didn't involve alcohol and, unlike the other two arrests, involved an element of dishonesty. However, that arrest, which involved a relatively minor offense, occurred over 13 years ago. I thereby find that the passage of time and rather minor nature of the transgression mitigate the security concerns raised by the Individual's involvement in the 1994 deer poaching incident.

IV. CONCLUSION

For the reasons set forth above, I conclude that the Individual has resolved the security concerns raised under Criteria J and L. Therefore, the Individual has demonstrated that granting him a security clearance would not endanger the common defense and would be clearly consistent with the national interest. Accordingly, I find that the Individual's access authorization should be restored. The DOE may seek review of this Decision by an Appeal Panel under the procedures set forth at 10 C.F.R. § 710.28.

Steven L. Fine
Hearing Officer
Office of Hearings and Appeals

Date: August 20, 2008